



May 28, 2004

VIA ELECTRONIC SUBMISSION

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Petition of SBC Communications Inc. for Forbearance from the Application of
Title II Common Carrier Regulation to IP Platform Services,
WC Docket No. 04-29

Dear Ms. Dortch:

The National Association of State Utility Consumer Advocates (“NASUCA”) submits comments in the above-referenced proceeding. SBC’s Petition for Forbearance is without basis, and NASUCA urges the Commission to reject SBC’s Petition.

As SBC explicitly recognizes, the issues with regard to its Petition are inextricably tied to the issues presented by SBC’s on February 5, 2004 petition for a declaratory ruling that Internet Protocol (“IP”) platform services 1) are interstate services; 2) are not telecommunications services; and 3) should not be subject to the *Computer II* requirements.¹ This is shown by the fact that SBC has appended its 53-page Declaratory Ruling Petition to its 12-page Forbearance Petition, and incorporated the Declaratory Ruling Petition into the Forbearance Petition by reference.² Each of the three points raised in the SBC Petition for Declaratory Ruling is crucial to the arguments by SBC urging forbearance. SBC also explicitly depends on the Petition for Declaratory Ruling for the very definition of IP Platform services for which it seeks forbearance here.³

The Commission has incorporated discussion of the SBC Declaratory Ruling Petition into its Notice of Proposed Rulemaking on IP-Enabled Services in WC Docket No. 04-36.⁴ NASUCA therefore submits its Comments in WC Docket No. 04-36 (see attached) into the record of this proceeding as comments on the SBC Forbearance Petition. In summary, NASUCA’s 04-36 Comments are relevant to this proceeding because:

¹ SBC Forbearance Petition at 1. The “*Computer II* requirements” are those established in *Amendment of Section 64.702 of the Commission’s Rules and Regulations*, Docket No. 20828, Final Decision, 77 F.C.C.2d 384 (1980).

² SBC Forbearance Petition at 1.

³ *Id.*

⁴ See Public Notice, DA 04-899 (March 30) at 1, n.2.

(1) The Forbearance Petition's definition of "IP platform services" places all such services into a single category. As discussed in NASUCA's 04-36 comments, there is a wide variety of IP services and also of the "subcategory" of Voice over IP ("VoIP"). SBC's loose definition (or, more accurately, lack of definition) is inadequate to determine for which services SBC seeks forbearance under 47 U.S.C. § 160(c).

(2) SBC's argument that regulation of IP platform services is unnecessary to protect the public interest⁵ takes a narrow view of the public interest. In fact, as NASUCA's 04-36 Comments show, the public interest is many-faceted, and thus regulation of IP platform services is essential to protect the public interest. Regulation is especially needed for VoIP, which is marketed as a substitute for traditional telephone services.

(3) SBC's argument against regulation depends entirely on the assumption that competitive markets alone, without regulation, will protect consumers. Yet the regulation proposed in NASUCA's comments is, in many respects, the same that as found in competitive markets throughout the country – from gasoline to groceries. Although the "invisible hand" of competition may eventually discipline "bad actors," in the meantime many consumers will suffer.

(4) SBC's argument that regulation is not necessary to ensure that charges and practices are just, reasonable and not unduly discriminatory⁶ – the third requirement of § 160(c)⁷ – depends on a misleading reference to § 706 of the Telecommunications Act of 1996. Section 706 specifically requires that regulatory methods must be "consistent with the public interest..." This Commission's finding that the mandate of § 706 to promote broadband investment "weighs heavily in favor of forbearing under section 10 from unnecessary regulation of advanced services"⁸ should not require forbearance when the services, such as VoIP, are *not* "advanced" or "enhanced" but, instead, are offered only as substitutes for traditional telephone service.

Should you have questions, please contact me by e-mail (etter@occ.state.oh.us) or telephone (614-466-7964).

Sincerely,

/s/ Terry L. Etter
Terry L. Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel

cc: Charlie Acquard, NASUCA

⁵ SBC Forbearance Petition at 5-10

⁶ *Id.* at 11-12.

⁷ SBC acknowledges that forbearance requires the Commission to find that all three conditions are met. *Id.* at 4.

⁸ *Id.* at 12, citing *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24044-45, ¶ 69 (1998).